

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**NEIL IAIN WOODROW,
Solicitor, of Macbeth and
Maclagan, Solicitors, 34 Castle
Street, Rothesay.**

1. A Complaint dated 28 July 2006 was lodged with the Scottish Solicitors Discipline Tribunal by the Council of Law Society of Scotland (hereinafter referred to as 'the Complainers') requesting that Neil Iain Woodrow, Solicitor of Macbeth and Maclagan, Solicitors, 34 Castle Street, Rothesay. (hereinafter referred to as 'the Respondent') be required to answer the allegations contained in the Statement of Facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged by the Respondent.
3. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 25 January 2007 and notice thereof was duly served on the Respondent.

4. The Complaint was heard on 25 January 2007. The Complainers were represented by their Fiscal, Andrew Lothian, Solicitor, Edinburgh. The Respondent was present and represented by Mr McCann, Solicitor, Kilmarnock.
5. A Record was lodged together with a Joint Minute admitting the facts and averments of duty. Mr McCann advised that Mr Woodrow accepted the averments of professional misconduct.
6. In respect of these admissions no evidence was led and the Tribunal found the following facts established:-

6.1 The Respondent was born on 8 May 1959. He was admitted as a solicitor on 2 August 1983. He was enrolled as a solicitor in the Registers of Scotland on 19 August 1983. Following his admission as a solicitor, the Respondent was employed by the firm of Stevenson, Kennedy & Co, latterly of Linndhu House, 19 Stevenson Street, Oban until 1 April 1988 when he was assumed as a partner in that firm. The Respondent was a partner in the firm of Stevenson, Kennedy & Co until 26 March 1993. On 1 April 1993 the Respondent became a partner in the firm of Macbeth & Maclagan, 34 Castle Street, Rothesay. Since 1 April 1999 he has carried on business under that name on his own account as a sole practitioner.

6.2 The Inspection of 16 August 2004

In pursuit of their statutory duties, the Complainers carried out an inspection of the financial records and other documentation operated by the Respondent at his place of business on 16, 17 and 18 August 2004. The inspection revealed to the Complainers a number of breaches of the Solicitors (Scotland) Accounts etc Rules 2001 (hereinafter referred to as “the Accounts Rules”) and a number of concerns regarding the manner in which the Respondent

dealt with his conveyancing practice. In particular the following were identified:

6.3 In the course of the inspection, the Guarantee Fund Inspector recovered from the Respondent a sample of his files and ledgers for inspection. The Inspector identified numerous transactions where the Respondent had allowed conveyancing documentation to remain unrecorded. The unrecorded deeds were, however, not on the client files. In particular:

- (a) The Respondent acted for a Ms A in connection with a purchase transaction which settled on or about 4 June 2004. The purchase price was partially funded through the client obtaining a mortgage from Woolwich. The Disposition in favour of Ms A and the Standard Security in favour of Woolwich were unrecorded.
- (b) The Respondent acted for a Mr B in connection with a purchase transaction which settled on or about 22 July 2004. The Disposition in favour of Mr B was unrecorded.
- (c) The Respondent acted for a Ms C in connection with a purchase transaction which settled on or about 11 June 2004. The purchase price was partially funded through the client obtaining a mortgage from Halifax plc. The Disposition in favour of Ms C and the Standard Security in favour of Halifax were unrecorded.
- (d) The Respondent acted for a Ms D in connection with a purchase transaction which settled on or about 6

July 2004. The Disposition in favour of Ms D was unrecorded.

- (e) The Respondent acted for a Mr and Mrs E in connection with a purchase transaction which settled on or about 9 July 2004. The purchase price was partially funded through the client obtaining a mortgage from Lloyds TSB. The Disposition in favour of Mr and Mrs E and the Standard Security in favour of Lloyds TSB were unrecorded.
- (f) The Respondent acted for a Mrs F in connection with a purchase transaction which settled on or about 28 September 2000. The Disposition in favour of Mrs F was unrecorded.
- (g) The Respondent acted for a Ms G in connection with a purchase transaction which settled on or about 1 August 2001, and rectification of a title which rectification occurred on or about 28 March 2002. The Disposition in favour of Ms G was unrecorded.
- (h) The Respondent acted for a Mr H in connection with a purchase transaction which settled on or about 24 June 2002. The purchase price was partially funded through the client obtaining a mortgage from HSBC plc. The Disposition in favour of Mr H and the Standard Security in favour of HSBC were unrecorded.
- (i) The Respondent acted for a Mr and Mrs I in connection with a purchase transaction which settled on or about 30 May 2001. The Disposition in favour of Mr and Mrs I was unrecorded.

- (j) The Respondent acted for a Mr and Mrs J in connection with a purchase transaction which settled on or about 5 April 2001. The Disposition in favour of Mr and Mrs J was unrecorded.
- (k) The Respondent acted for a Mr and Ms K in connection with a purchase transaction which settled on or about 27 September 2001. The purchase price was partially funded through the clients obtaining a mortgage from Abbey. The Disposition in favour of Mr and Ms K and the Standard Security in favour of Abbey were unrecorded.
- (l) The Respondent acted for client L in connection with a purchase transaction which settled on or about 18 December 2003. The Disposition in favour of client L was unrecorded.
- (m) The Respondent acted for a Mr and Mrs M in connection with a purchase transaction which settled on or about 21 January 2004. The Disposition in favour of Mr and Mrs M was unrecorded.
- (n) The Respondent acted on behalf of client N in connection with a transfer of heritable title which settled on or about 6 May 2004. The Disposition in favour of client N was unrecorded.
- (o) The Respondent acted for a Ms O in connection with a transfer of title which settled in or about 2003. The Disposition in favour of Ms O was unrecorded.

6.4 The inspection also revealed that the Respondent had failed to place monies in excess of £500 held on behalf of clients in a separate interest-bearing account. Examples included:

- (a) Mrs F: £773
- (b) Ms P: £15,000 from 31 March 2004
- (c) Client Q: £743.68 from 31 May 2002
- (d) Mr and Mrs R: £976 from prior to 29 January 1999, being the date the balance was brought forward into the Respondent's system

6.5 The procedures and evidence of the reconciliation of invested funds operated by the Respondent were not as required by the Accounts Rules. The Respondent had failed to carry out a reconciliation of invested funds on a quarterly basis.

6.6 The inspection of 25 July 2005

Following the earlier inspection and the numerous concerns raised by the Complainers, in pursuit of their statutory duties the Complainers carried out a further inspection of the financial records and other documentation kept by the Respondent at his place of his business on 25 and 26 July 2005. The inspection again revealed to the Complainers a number of concerns in connection with the manner in which the Respondent finalised conveyancing transactions.

6.7 In particular, the following were identified as matters which the Respondent had not dealt with in the period since the inspection in August 2004:

- (a) The Disposition in favour of Ms A and the relevant Standard Security in favour of the Woolwich remained unrecorded.
- (b) The Disposition in favour of Mr B remained unrecorded.
- (c) The Disposition in favour of Mr and Mrs E and the relevant Standard Security in favour of Lloyds TSB remained unrecorded.
- (d) The Disposition in favour of Mrs F remained unrecorded.
- (e) The Disposition in favour of Mr and Ms K and the relevant Standard Security in favour of Abbey remained unrecorded.
- (f) The Disposition in favour of client L remained unrecorded.
- (g) The Disposition in favour of Mr and Mrs M remained unrecorded.
- (h) The Disposition in favour of client N remained unrecorded.

6.8 In the course of the inspection, the Guarantee Fund Inspector recovered from the Respondent a further sample of his files and ledgers for inspection. The Inspector identified numerous transactions where the Respondent had allowed conveyancing documentation to remain unrecorded. In particular:

- (a) The Respondent acted for a Mr S in connection with a purchase transaction which settled in or about July 2004. The purchase price was partially funded through the client obtaining a mortgage from Halifax plc. The Disposition in favour of Mr S and the Standard Security in favour of Halifax plc were unrecorded.
- (b) The Respondent acted for a Mr T in connection with a purchase transaction which settled on or about 28 July 2004. The purchase price was partially funded through the client obtaining a mortgage from Halifax plc. The Disposition in favour of Mr T and the Standard Security in favour of Halifax plc were unrecorded.
- (c) The Respondent acted for a Mr U in connection with a purchase transaction which settled on or about 1 June 2004. The Disposition in favour of Mr U was unrecorded.
- (e) The Respondent acted for a Mr V in connection with a Standard Security granted by him in favour of Halifax plc in or about April 2005. The Standard Security had not been recorded.
- (f) The Respondent acted for a Mr W in connection with a purchase transaction which settled in or about November 2003. The Disposition in favour of Mr W was unrecorded.
- (g) The Respondent acted for a Mr and Mrs X in connection with a purchase transaction which settled in or about August 2000. The purchase price was

partially funded through the client obtaining a mortgage from Clydesdale Bank. The Disposition in favour of Mr and Mrs X and the Standard Security in favour of Clydesdale Bank were sent to the Registers on 25 July 2005.

6.9 The inspection also revealed that the Respondent had failed to comply with obligations imposed on him by the Money Laundering Regulations by virtue of Rule 24 of the the Accounts Rules. The Respondent acted for a Mrs Y in connection with a purchase of heritable property. The Respondent had not obtained evidence regarding the source of funds received for that purchase or the identity of those providing the funds.

6.10 Matters following the inspection of 25 July 2005

By letter dated 30 September 2005, the Respondent exhibited to the Complainers a copy of a Disposition in favour of Mr and Mrs R, for whom the Respondent had acted in connection with a purchase of heritable property. The transaction settled in or about 12 February 1998. The Respondent had sent the relevant Disposition to the Keeper of the Registers of Scotland, for registration, by letter dated 24 August 2005.

6.11 The inspection of 27 February 2006

Following the earlier inspections and the numerous concerns raised by the Complainers, in pursuit of their statutory duties the Complainers carried out a further inspection of the financial records and other documentation kept by the Respondent at his place of his business on 27 and 28 February, and 1 March, 2006. The inspection again revealed

to the Complainers a number of concerns in connection with the manner in which the Respondent finalised conveyancing transactions.

6.12 In particular, the following were identified as matters which the Respondent had not dealt with in the period since the inspection in August 2004:

- (a) The Disposition in favour of Ms A and the relevant Standard Security in favour of the Woolwich remained unrecorded.
- (b) The Disposition in favour of client L remained unrecorded.

6.13 The following were identified as matters which the Respondent had not dealt with in the period since the inspection in July 2005:

- (a) The Disposition in favour of Mr S and the relevant Standard Security in favour of the Halifax remained unrecorded.
- (b) The Disposition in favour of Mr T and the relevant Standard Security in favour of the Halifax remained unrecorded.

6.14 In the course of the inspection, the Guarantee Fund Inspector recovered from the Respondent a further sample of his files and ledgers for inspection. The Inspector identified numerous transactions where the Respondent had allowed conveyancing documentation to remain unrecorded. In particular:

- (a) The Respondent acted for a Mr and Mrs Y in connection with a sale transaction which settled in or about August 2004. Mr and Mrs Y had previously granted a Standard Security, which had been recorded. The Discharge in favour of Mr and Mrs Y had not been recorded.
- (b) The Respondent acted for a Mr and Mrs Z in connection with a purchase transaction which settled in or about November 2004. The purchase price was partially funded through the client obtaining a mortgage from Lloyds TSB. The Disposition in favour of Mr and Mrs Z and the Standard Security in favour of Lloyds TSB were unrecorded.
- (c) The Respondent acted for a Mr and Mrs AA in connection with a purchase transaction which settled in or about July 2004. The Disposition in favour of Mr and Mrs AA was unrecorded.
- (d) The Respondent acted for client AB in connection with a transfer of title which settled in or about December 2003. The Disposition in favour of client AB was not recorded until February 2006.
- (e) The Respondent acted for client AC in connection with a purchase transaction which settled in or about August 2000. The Disposition in favour of client AC was not recorded until February 2006.
- (f) The Respondent acted for a Mr and Mrs AD in connection with a purchase transaction which settled on or about 10 November 2005. The purchase was partially funded through the client obtaining a

mortgage. The Disposition in favour of Mr and Mrs AD and the Standard Security in favour of the lender were unrecorded.

- (g) The Respondent acted for a Miss AE in connection with a purchase transaction which settled in or about October 2005. The Disposition in favour of Miss AE was not recorded until January 2006.
- (h) The Respondent acted for a Mr AF in connection with a sale transaction which settled in or about November 2005. Mr AF had previously granted a Standard Security in favour of Blemain Finance, which had been recorded. The Discharge in favour of Mr AF had not been recorded.

6.15 The inspection also revealed that the Respondent had failed to comply with obligations imposed on him by the Money Laundering Regulations by virtue of Rule 24 of the Accounts Rules. The Respondent did not maintain adequate record keeping to demonstrate compliance with identification procedures which required clients to produce satisfactory evidence of the source of funds, or document why such evidence was not necessary.

6.16 Repeated breaches

Between August 2004 and February 2006 the Complainers required to carry out a number of examinations of the Respondent's financial records and books because of his repeated breaches of the Accounts Rules and the serious concerns regarding the manner in which the Respondent failed properly to finalise conveyancing transactions. The Complainers following each inspection wrote to the

Respondent in detail explaining their concerns and offering solutions and advice to the Respondent. The Respondent attended a meeting with the Complainers in November 2004 where solutions and advice were again offered to him, and various assurances given by him. This encouragement was not sufficiently heeded by the Respondent, who continued to breach the Accounts Rules and fail properly to conclude conveyancing transactions.

7. Having considered the foregoing circumstances, and heard submissions from the parties the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of :-

- 7.1 his breach of Rule 10 of the Accounts Rules by his failure to reconcile invested funds at quarterly intervals;
- 7.2 his failure to place clients money in an interest bearing account as required by Rule 11 of the Accounts Rules;
- 7.3 his failure to comply with obligations imposed on him by the Money Laundering Regulations 1993 in relation to the obtaining of evidence regarding the source of funds received for a conveyancing transaction and his failure to maintain adequate record keeping to demonstrate compliance with identification procedures thus breaching Rule 24 of the Accounts Rules;
- 7.4 his repeatedly acting in breach of the Accounts Rules despite his shortcomings in this respect being brought to his attention;
- 7.5 his unreasonable delay in recording or having registered titles in favour of his clients who thereby remained uninfert, his failure to record or have registered standard securities in favour of lending institutions over properties which meant that the lenders remained

unsecured for long periods of time and his unreasonable delay in having discharges recorded.

8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 25 January 2007. The Tribunal having considered the Complaint dated 28 July 2006 at the instance of the Council of the Law Society against Neil Iain Woodrow, Solicitor of Macbeth and Maclagan, Solicitors, 34 Castle Street, Rothesay; Find the Respondent guilty of Professional Misconduct in respect of his breach of Rules 10, 11 and 24 of the Solicitors (Scotland) Accounts etc Rules 2001, his repeatedly acting in breach of the Accounts Rules despite his shortcomings being brought to his attention and his unreasonable delay in recording and registering Dispositions and Standard Securities and Discharges; Censure the Respondent, Fine the Respondent in the sum of £2,000 to be forfeit to her Majesty; and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that for a period of five years with effect from 1 July 2007, the Respondent shall be subject to such Restriction on his practising certificate as will limit him to acting as a partner of, member in or qualified assistant to such solicitor, firm, limited liability partnership or other employer as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland (declaring that such solicitor or at least one partner in such firm shall have held a full practising certificate for at least five years); Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for General Business at a unit rate of £11.85; Direct that publicity will be given to

this decision and that this publicity should include the name of the Respondent.

(signed)

K R Robb

Vice Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

A Joint Minute was lodged admitting the averments of fact and duty. Mr McCann advised that the Respondent pled guilty to professional misconduct in respect of the cumulative effect of the conduct libelled. It was accordingly unnecessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lothian advised the Tribunal that this case involved two averments of professional misconduct and referred the Tribunal to page 10 of the Record at paragraph 8.1(a) which related to a breach of the Accounts Rules. Mr Lothian advised there were four specific breaches of the Accounts Rules specified in the Complaint. Firstly a failure to place clients' funds on an interest bearing account. He advised that there were four different sets of clients' funds involved which were set out in paragraph 2.3 of the Record. The total sum involved was £17,492.68. On behalf of the Complainers Mr Lothian submitted that this is a breach of Rule 11 of the Accounts Rules and has been accepted by the Respondent. Secondly, a failure to reconcile invested funds at quarterly intervals. He referred to the averments set out in paragraph 2.4 which amounts to a breach of Rule 10 of the Accounts Rules. He referred the Tribunal to Smith & Barton's book "Procedures and Decisions of the Scottish Solicitors' Discipline Tribunal" at page 181, paragraph 19.09 regarding the breach of this rule. Thirdly, there was one instance of failing to obtain evidence for the source of funds which is an accepted breach of the Money Laundering Regulations 1993. Mr Lothian referred the Tribunal to paragraph 3.4 of the Record which confirms that this breach of the Money Laundering Regulations 1993 is a breach of Rule 24 of the Accounts Rules. Fourthly, Mr Lothian referred to the Respondent's failure to operate a system of record keeping regarding the source of funds provided to him. Mr Lothian confirmed that this averment was contained in paragraph 5.5 of the Record and is a breach of Rule 24 of the Accounts Rules. He submitted that regulation 6 of the Money Laundering Regulations 1993 provide that records must be kept of the source of funds for five years. Mr Lothian submitted that these four failures to comply with the Accounts Rules taken together amount to professional misconduct.

Mr Lothian then referred to the second head of misconduct set out in paragraph 8.1(b) of the Record. This averment detailed the Respondent's unreasonable delay in recording or registering title deeds. Mr Lothian submitted that the number of deeds involved was 34 and that these failures were identified following Law Society inspections and occurred over a period of approximately 18 months. Mr Lothian submitted on behalf of the Law Society that the Tribunal had previously held that such breaches amount to professional misconduct and invited the Tribunal to find the Respondent guilty of professional misconduct in this case. Mr Lothian stated that he could refer the Tribunal to the requisite authority if that was required.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann stated that he did not dispute what Mr Lothian had said regarding professional misconduct and would not require the Tribunal to be addressed on the requisite authorities. Mr McCann stated that the Respondent had significantly co-operated with the Law Society and as a result the Joint Minute had been prepared.

Mr McCann stated that as outlined in the Answers these failures all arose from an episode of disorder in the Respondent's practice. The Respondent accepts that money needs to be put on an interest bearing account. Mr McCann submitted that in all cases the money was put on deposit receipt and interest was calculated and paid to the clients concerned from the Respondent's own funds. Mr McCann confirmed that there was no loss to anyone. Mr McCann submitted that the Respondent's breach of the Money Laundering Regulations 1993 was not a sinister breach as the Respondent was operating in Rothesay and knew all his clients well. Mr McCann submitted that the breaches of the Money Laundering Regulations were an oversight on the Respondent's part.

Mr McCann submitted that the failures in the Respondent's practice were as a result of disorder rather than anything sinister or deliberate. Mr McCann submitted that the Respondent did not have any lifestyle problems or financial problems and that this was a purely a lapse from his normal high standards of practice. He advised that the Respondent was 47 and had been in practice for 23 years with no previous problems. He advised that the Respondent was well thought of locally and was the Dean of his

small local Faculty. Mr McCann referred the Tribunal to the testimonials which had been submitted on the Respondent's behalf. Mr McCann also referred the Tribunal to the documents which had been submitted on the Respondent's behalf which show an unfortunate series of events, including the death of both parents and problems with retaining staff in the Highlands and Islands. Mr McCann submitted that there were problems when the Respondent took over the firm and then a consultant retired and a paralegal left who was not able to be replaced. Mr McCann submitted that the Respondent has now employed a competent assistant and all the problems have been sorted out.

Mr McCann referred to Elizabeth Campbell's letter confirming that she will amalgamate her firm with the Respondent's practice and that there will be five solicitors in the new practice with substantial support staff. Miss Campbell will be the Money Laundering Reporting Officer and the Designated Cashroom Partner of the new firm, roles she has experience of carrying out with her present firm. Mr McCann submitted that the Tribunal can be reassured by this and stated that the failures by the Respondent have been rectified and are very unlikely to be repeated.

Mr McCann urged the Tribunal not to impose an order which would restrict the Respondent's practice and prevent the new firm being set up. Mr McCann submitted that any such restriction would significantly affect the proposed merger and the provision of legal services locally. Mr McCann repeated that he did not intend to address the Tribunal on the matter of expenses or publicity.

In response to a question from the Tribunal Mr McCann indicated that the merger is contingent on the Law Society's inspection and the decision of the Tribunal. He submitted that the Respondent requires to be able to be a director of the new company. The merger was due to take place within 8 weeks.

In response to another question from the Tribunal as to the fact that some failures to record deeds were from 2000, Mr McCann stated that the Respondent's partner, Mr Maclagan retired from practice in 1999 then stayed on as a consultant. There then began to be some evidence that the Respondent was not coping well without Mr Maclagan. There was evidence of the beginnings of difficulties exasperated by a

series of unfortunate events. However Mr McCann stressed that all the failings have been put right and interest has been paid in full and submitted that none of these events are likely to recur. Mr McCann referred to a recent Tribunal case where one single failure to record a deed was treated as professional misconduct. However Mr McCann submitted that in this case no-one suffered any harm. This was purely an administrative failure; all the deeds were prepared properly and stamped. Mr McCann stressed that no-one had suffered as a result of the Respondent's failures.

DECISION

The Tribunal was of the view that the Respondent had exhibited an inability to cope when he was working as a sole practitioner albeit that his personal circumstances during a particularly stressful period of time had aggravated his difficulties. The Tribunal noted that the Respondent had accepted that he was guilty of professional misconduct in respect of the failures averred in the Complaint. The Tribunal was concerned by the number of breaches of the Accounts Rules and delay in recording of deeds over a period of time. It is imperative that solicitors deal with conveyancing in a proper manner to ensure that the interests of clients and lenders are safeguarded. It is also essential that solicitors should have regard to the obligations expected of them in terms of the Accounts Rules. The Respondent was clearly not coping with running his own practice. The Tribunal however took account of the testimonials lodged and the fact that a merger of the Respondent's firm has been planned.

The Tribunal was of the view that it required to protect the public by preventing the Respondent from working alone for a period of time. The Tribunal noted the significant number of failures identified by the Law Society's inspections. The Tribunal noted that three inspections had identified failures by the Respondent before these failures were addressed. In view of this the Tribunal considered that a financial penalty should be imposed. The Tribunal was of the view that it was necessary to restrict the Respondent's practising certificate for a period of five years to prevent him from carrying on business as a sole practitioner. The Restriction is to the effect that the Respondent is limited to acting as a partner or as a qualified assistant to such solicitor, firm or other employer as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law

Society of Scotland (declaring that such solicitor or at least one partner in such firm shall have held a full practising certificate for at least five years). In view of the fact that the Respondent had taken steps to arrange a merger with another local firm the Tribunal agreed that the Restriction would not take effect until 1 April 2007. The Tribunal fined the Respondent in the sum of £2,000 and made the usual order for publicity and expenses.

Vice Chairman